IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.3715 OF 2005

Shakeel Ismail Furniturewalla & Ors. : Petitioners
(Orig.Defendant Nos.2 to 5)

V/s.

Homi G. Sarkary & Ors. : Respondents
(Resp.No.1-Orig.Pltff. and
Resp.No.2-Orig.Deft.No.1)

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Mr.S.I.Memon for the petitioners.

Mr.Hemant Sethi for the respondent no.1.

Mr.R.V.Govilkar for the respondent no.2.

Mr.R.M.Patne, Asstt. Govt. Pleader for the respondent no.3.

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CORAM : S.A. BOBDE, J.

July 22, 2005.

P.C.:

1. Rule, returnable forthwith.

The learned counsel for the respective respondents waive service of rule.

Heard by consent.

2. The petitioners have been granted conditional leave to

defend on depositing a sum of Rs.9,98,000/- in Court. The summary suit has been filed under Order XXXVII by the respondent no.1.

3. The learned counsel for the petitioners submitted that no condition ought to have been imposed while granting leave to defend, in view of the allegation that the agreement on which the suit is based is entered into by the respondent no.1 with the respondent no.2. The respondent no.2, according to the learned counsel, has entered into the agreement in his individual capacity and not as a partner of M/s.Richie Rich Builders & Developers of which the petitioners are partners. The learned counsel for the petitioners relied on the partnership deed, which is admittedly unregistered, in which there is a clause that the agreement shall be signed by two of the partners. Therefore, according to the learned counsel, the agreement is by the respondent no.2 Azam Ali Khan is in his personal capacity and not as a partner of M/s.Richie Rich Builders & Developers.

4. The learned counsel for the petitioners further submitted that the agreement also shows that it is only between Azam Ali Khan (respondent no.2) and Homi G. Sarkary (respondent no.1) and the firm is not a party to

the agreement.

5. The learned trial Court has considered all these aspects and having regard to one of the clauses in the agreement, which clause shows that Homi G. Sarkary has agreed to pay a sum of Rs.13,00,000/- out of which a sum of Rs.9,98,000/- has already been paid to the firm i.e. Richie Rich Builders & Developers, came to the conclusion that the petitioners are not entitled to dis-associate themselves entirely with the transaction. I see no error of law apparent on the face of the order. Undoubtedly, the question will be open for decision on merits. However, on a reading of the agreement, there are two clauses which prima facie suggest the involvement of the firm. Firstly, that the respondent no.1, who is one of the parties to the agreement is a partner in the firm M/s.Richie Rich Builders & Developers; secondly, M/s.Richie Rich Builders & Developers has received an amount of Rs.9,98,000/- in respect of the agreement which is the basis of the suit. Hence, there is no infirmity, jurisdictional or otherwise. I see no merit in the petition which is hereby dismissed.

6. The rule stands discharged.

S.A. BOBDE, J.